SUPREME COURT, U. S.

FILED

DEC 7 1973

MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-618

HARRISON PROPERTY MANAGEMENT CO., INC., WALTER J. HARRISON, WILLIAM H. HARRISON and MRS. LYDIA HARRISON COUTURIE RYAN,

Petitioners

versus

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

## REPLY FOR PETITIONERS

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TO THE HONORABLE WARREN BURGER, CHIEF JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The respondent in its memorandum in opposition to the petition for writ of certiorari misstates the issue in this case. The question is not whether the corporation, Harrison Property Management Co., Inc., (a) is a taxable entity or (b) is engaged in business activity, but rather whether the corporation, Harrison Property Management Co., Inc., could have been the agent for its owners-principals, pursuant to a clear and unambiguous

agency agreement entered into simultaneously with the transfer of record title to it of the owners' property. Said property produced the income in question and the said transfer would not have been made except for the simultaneous execution of the agency agreement between the corporation and the three individual owners of the property. Moreover, the transfer was made without any consideration whatsoever.

The Commissioner of Internal Revenue erroneously determined that the income from the property so transferred belonged to the corporation, contrary to the intention of the parties as shown by the clear and unambiguous provisions of the agency agreement between the owners of the property and the corporation, which held record title solely for the purpose of management, pursuant to the agreement. The Trial Commissioner of the United States Court of Claims gave full effect to all three documents executed by the individuals, namely, (i) the corporate charter, (ii) the transfer of record title of the property to the corporation, and (iii) the simultaneously executed agency agreement between the individual owners of the property and the corporation. In failing to follow the Trial Commissioner's recommendations, the United States Court of Claims erroneously concluded that the corporation was taxable on income which it had received as agent for its owners-principals.

Respondent's memorandum states that the Court of Claims correctly followed the decisions of this Court in Moline Properties v. Commissioner, 319 U.S. 436 (1943) and National Carbide Corporation

v. Commissioner, 336 U.S. 422 (1949), in that those cases "established the rule that a corporate entity cannot be ignored for federal income tax purposes", (Mem., p. 3), and that the corporation performed functions "which were more than sufficient to constitute business activity under Moline Properties." (Mem., p. 3). As pointed out in the petition for writ of certiorari, the agency argument failed in the Moline case because an agency agreement had not been established, whereas in this case it is clear that the parties entered into an agency agreement for the sole purpose of providing management for the property in question by the corporation. At all times,the income from the property was treated on the books of the corporation as belonging to the individual owners in the proportion of a one-third (1/3) each, and the income was not recorded as earned by the corporation. The expenses incurred, in connection with the management of the property, were recorded as liabilities of, and were charged to, the three individuals, also in equal proportions. The corporate books showed that the property, itself, was owned by the three individuals in equal proportions, not by the corporation. The testimony taken at the trial of the case (Transcript, p. 58-69) describes the books and records of the corporation from which it was overwhelmingly established that the corporation, at all times, held the property merely as agent for the three individuals. See Joint Exhibit 58.

There can be no doubt that the activities of the corporation were those

normally carried on by an agent, i.e., the collection of rents and distribution thereof to the principals, the payment of expenses and the charging of said expenses to the principals, the execution of leases on behalf of the principals, granting of rights-of-way, all of which activities the agent was expected to carry on as specifically provided in the agreement between the principals and the agent. Moreover, the limitations placed upon the agent with respect to alienation of the property were consistent with the principal-agency relationship. The corporation, Harrison Property Management Co., Inc., is not to be regarded as a "dummy" corporation but must be recognized as an entity which acted as agent for its principals. The National Carbide case does not require that the true corporate agent which is managing property for its owner-principal be also engaged in the management of property of others in order to be controlled by the rule that the income of the principal is not taxable to the agent. Nevertheless, it is clear that the corporate charter in this case, did, in fact, give Harrison Property Management Co., Inc., the authority to hold title to property belonging to persons other than its shareholders and to manage such property. The corporation was free to enter into any type of management contract with such owners of property as might be mutually satisfactory. The ministerial nature of the corporation's activities was reviewed by the Trial Commissioner to show that, unlike the corporate agent in the case of National Carbide Corporation v. Commissioner, supra, the corporation,

Harrison Property Management Co., Inc., was not engaged in any business of its own. (Pet. App. A 20).

By treating the deed which transferred record title to the property to the corporation as unrelated to the contemporaneously executed agency agreement, the respondent has fragmented what was intended to be a unity transaction. That is,the transfer of the property would not have taken place without the execution of the agreement between the corporation and the individual owners of the property. It is submitted that the respondent cannot arbitrarily select one of the steps in a unified select one of the steps in a unified transaction and accord that step independent significance. Thus the corporation would not have had any property in its name except upon the condition that the corporation would act solely as agent for the individuals (and not as owner), all as set out in the agreement entered into between the individuals and the corporation. The agency relationship therefore is not dependent upon the fact that the corporation is owned by the principals, but rather the agency relationship is established by the agreement and the Articles of Incorporation. (Joint Exhibits 1 and 6, Pet. App. A 27-32, 12-14).

## CONCLUSION

No provisions of the Internal Revenue Code, Treasury Regulations, or decisions in any cases require the disregard of the agency relationship between Harrison Property Management Co., Inc., and the three individuals, which the Trial Commissioner found to exist. (Pet. App. A 20, 22, 23). Holding record title to the property did not make the corporation the owner of the property for tax or any other purposes, in view of the conditions under which the corporation had acquired such record title. Therefore, the income in question was not income from the corporation's property but was income which the corporation received solely as agent for the account of its principals-owners. For the reasons set out above, as well as those stated in the petition for writ of certiorari, petitioners pray that the petition for writ of certiorari be granted.

(ORIGINAL SIGNED)
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CERTIFICATE OF SERVICE

I, C. ELLIS HENICAN, attorney for petitioners, in the application for writ of certiorari and a member of the Bar of the Supreme Court of the United States, do hereby certify that on this day I have served copies of the foregoing Reply for Petitioners on:

Hon. Robert H. Bork
Solicitor General
Department of Justice
Washington, D. C. 20530

and

Hon. Scott P. Crampton
Assistant Attorney General
Attention: Mr. Thomas Smidt, II
Department of Justice
Tax Division
Washington, D. C. 20530

by mailing copies thereof, Air Mail, postage prepaid, addressed to their respective offices, this day of December, 1973.

All parties required to be served have been served.

(ORIGINAL SIGNED)
C. ELLIS HENICAN

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